

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff

vs

JOSE R. PAULINO-SERRANO

Defendant

CRIMINAL 04-0018CCC

ORDER

Before the Court is the Objection to Presentence Investigation Report filed by defendant José R. Paulino-Serrano on August 17, 2005 (docket entry 141). Defendant seeks the application of a three-level downward adjustment under § 3E1.1 of the advisory sentencing guidelines for his acceptance of responsibility, which had been stipulated by the parties in their Plea Agreement (docket entry 117) but not recognized by the U.S. Probation Officer in the Pre-Sentence Report (PSR) (docket entry 134).

The U.S. Probation Officer based her refusal to apply the adjustment on the interview she conducted of defendant, where he appears to have reneged on the Government's Version of the Facts stipulated by the parties and which served as a basis for his guilty plea, and denied having dealt with heroin or possessing a firearm, precisely the acts on which the offenses of conviction are based. See PSR (docket entry 134), at p. 5, ¶ 14. The Court notes, however, that defendant's interview took place after he entered a plea of guilty before Chief U.S. Magistrate-Judge Arenas, which was accepted based on the government's "extensive proffer of its evidence with which the defendant concurred in pertinent part" and which served as a "basis in fact ... to establish all elements of the offense charged beyond a reasonable doubt." See Magistrate-Judge's Report and Recommendation Re: Rule 11 Proceedings (Plea of Guilty) (docket entry 119), at p. 5. The Court is satisfied that defendant's admissions before the Magistrate-Judge of facts sufficient to enable the acceptance of his plea of guilty constitute a clear demonstration of acceptance of responsibility for the offenses allowing the application of the downward adjustment

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contemplated by U.S.S.G. § 3E1.1.

Accordingly, defendant's objection to the PSR is SUSTAINED. The Court will apply a three-level downward adjustment under § 3E1.1 and sentence the defendant accordingly.

In view of this finding, the Urgent Motion Providing Notice of Intent to Call Witness and Requesting Order to BOP filed by defendant on August 29, 2005 (docket entry 144) is DENIED AS MOOT.

SO ORDERED.

At San Juan, Puerto Rico, on August 30, 2005.

S/CARMEN CONSUELO CEREZO
United States District Judge